

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIMOTHY ASKERNEESE,

Plaintiff,

13cv0634

ELECTRONICALLY FILED

v.

COLUMBIA GAS OF PENNSYLVANIA,
INC.,

Defendant.

**ORDER OF COURT DENYING PLAINTIFF'S MOTION FOR PERMISSION TO TAKE
INTERLOCUTORY APPEAL (DOC. NO. 107)**

Literally, on the eve of trial, Plaintiff seeks to stop the upcoming trial - - the preliminary pretrial conference is occurring today (Wednesday, February 12, 2014), the final pretrial conference will occur in two (2) working days (this Friday, February 14, 2014), and the jury selection and trial will commence in three (3) working days (Tuesday, February 18, 2014) (Monday being a federal holiday). This Motion is a belated attempt to stop the trial of this case, which has been scheduled since June 13, 2013. See Pretrial Order (doc. no. 24). The Court has already ruled on all motions in limine (doc. no. 94), all jury voir dire questions (doc. no. 110), and preliminary jury instructions (doc. no. 111). Thus, the present Motion (doc. no. 107) is quite untimely.

The underlying motion on which Plaintiff now seeks permission to file an interlocutory appeal was Plaintiff's Motion for Leave to Amend Pleadings at Trial which was included in a document filed by Plaintiff, entitled "Response in Opposition to Defendant's Motion in Limine to Limit Plaintiff's Claim and Available Damages (doc. nos. 61, 62) and Cross-Motion for Leave to Amend Pleadings at Trial" (doc. no. 77, filed January 30, 2014). This instant Motion (doc. no.

107) to expand the scope of the trial was filed six (6) months after the close of the period to amend pleadings of July 12, 2013 - - further, discovery closed on November 13, 2013, and Court ruled on Defendant's summary judgment motion on January 17, 2014. See doc. nos. 23, 48, 49. To grant said Motion would place into this upcoming trial a new discrimination claim (involving different time periods, witnesses, and facts - - see doc. no. 115 at 7) that did not proceed through the EEOC administrative process and was not part of the Court's summary judgment process. Thus, the Court denied said Motion for Leave to Amend Pleadings at Trial (doc. no. 77), by Order, dated February 4, 2014 (doc. no. 94) and denied the related Motion for Reconsideration (doc. no. 95), by Order, dated February 11, 2014 (doc. no. 106).

Finally, it is the opinion of this Court that the interlocutory appeal of the complained of Order (doc. no. 106) will not materially advance the disposition of this litigation, and does not involve a controlling question of law as to which there is substantial ground for difference of opinion. See 28 U.S.C. § 1292. Therefore, Plaintiff's Motion (Doc. No. 107) is DENIED.

SO ORDERED, this 12th day of February, 2014

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Court Judge